Supreme Court, U.S.
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85-1124

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD D. CHRISTENSEN, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

EDWARD D. CHRISTENSEN
387 North 300 East
Richfield, Utah 84701
(801) 896 4719
In Propria Persona

No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD D. CHRISTENSEN, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

QUESTIONS PRESENTED

1. Can Petitioner be fined under 26 U. S. C. Sec. 7203?

2. Can Petitioner's property be taken without due process of law?

3. Can Petitioner's property be sold in violation of 28 U. S. C. Sec. 2463?

PARTIES TO THE PROCEEDING

Pursuant to Rules 21.1 (b) and 28.1 the Commissioner of Internal Revenue is a party represented by the U. S. Attorney's Office on behalf of the United States of America.

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OPINIONS BELOW

Reference is here made to T. C. Memo 1982-672, filed Nov. 22, 1982, to Order of the United States District Court, District of Utah, Certral Division in Civil Misc. 83-19 J, Filed Oct. 27, 1983 summarizing proceedings in said case, and to Findings of Facts in case No. C-84-731 W in the United States District Court, District of Utah, Central Division, appended hereto.

JURISDICTION

This Petition seeks review of Order and Judgment in Cases 84-2459 and 84-2503 both filed March 4, 1985 in the United States Court Of Appeals, for the Tenth Circuit. Time of entry not shown. Orders denying rehearing are June 10, 1985 and Oct. 8, 1985. Statute believed to confer jurisdiction on this Court is 28 U.S.C. Sec; 1254.1, and Art. III, Sec. 2, U.S. Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

U.S. CONSTITUTION ARTICLE I

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

U.S. CONSTITUTION - AMENDMENTS

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property to taken for public use, without just compensation.

Amendments XVI. The Congress shall have power to lay and collect taxes on

incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

United States Code, Title 26

Sec. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

(a) General Rule.- Returns with respect to income taxes under subtitle A shall be made by the following:

(1) (A) Every individual having for the taxable year a gross income of $1,000 or more, except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C))- (emphasis added)

Balance of (1) (A) not applicable to this case, see subparagraph (C)

(B) Not applicable to this case, see subparagraph (C).

(C) The exception under subparagraph (A) shall not apply to-

(i) a nonresident alien individual;

(ii) a citizens of the United States entitled to the benefits of section 931;

(iii) an individual making a return under section 443(a) (1) for a period of less than 12 months on account of a change in his annual accounting period.

(iv) an individual who has income (other than earned income) of $1,000 or more and who is described in Sec. 63(e) (1) (D); or

(v) an estate or trust.

Sec. 6020. RETURNS PREPARED FOR OR EXECUTED BY SECRETARY.

(a) Preparation of Return by Secretary.- If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that

case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person. (emphasis added)

(b) Execution of Return by Secretary.

(1) Authority of secretary to execute returns.- If any person fails to make any return (other than a declaration of estimated tax required under section 6015) required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false of fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. (emphasis added)

(2) Status of return.- Any return so made and suscribed by the

Secretary shall be prima facia good and sufficient for all legal purposes (emphasis added).

SEC. 6201 ASSESSMENT AUTHORITY.

(a) Authority of Secretary.- The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return.- The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp.-

(A) Omitted stamps.- (not applicable to this case)

(B) Check or money order not duly paid.- (not applicable to this case)

(3) Erroneous income tax prepayment credits.- (not applicable to this case)

(4) Erroneous credit under section 39 or 43.- (not applicable to this case)

(b) Amount not to be assessed.-

(1) Estimated income tax.- (not applicable to this case)

(2) Federal unemployment tax.- (not applicable to this case)

(c) Compensation of Child.- (not applicable to this case)

(d) Deficiency Proceedings.-

For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

Sec. 6203. METHOD OF ASSESSMENT.

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment. (emphasis added)

SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority therof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who wilfully fails to pay such estimated tax or tax, made such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition

to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the cost of prosecution.

SEC. 7343. DEFINITION OF TERM "PERSON".

The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

UNITED STATES CODE, TITLE 28

Sec. 2463. Property taken under revenue law not repleviable

All property taken or detained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and sub-

ject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

TAX REGULATIONS

Sec. 301.6203-1 Method of assessment

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the

assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of the assessment, he shall be furnished a copy of the pertinant parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amount assessed. (emphasis added)

STATEMENT OF THE CASES

This petition covers two cases combined under rule 19.4.

CASE NO. 1

Petitioner Edward D. Christensen, was convicted in the U.S. District Court for the Western District of Washington on three counts of alleged violations of 26 U.S.C. Sec. 7203, failure to file income tax returns. On February 10, 1978, Petitioner was sentenced to serve a term of eight months on each of the three counts, to run consecutively and to pay a fine of $5,000 on each of the three counts. Petitioner served the full term of his imprisonment. The United States registered judgment for the alleged fine in the District Court, District of Utah Central Division, Petitioner was ordered to surrender silver to the clerk of the court pending outcome of the case. Petitioner did deposit 1293 silver dollars with

the clerk of the court on October 12, 1983. The United States executed upon the silver and motioned the court for an order to sell the silver dollars. Motion was granted. Petitioner appealed to the United States Court of Appeals, for the Tenth Circuit. Court of Appeals affirmed District Court judgment on March 4, 1985. Petitioner filed two petitions for rehearing, both were denied. Newly discovered evidence of innocence has emerged. Petitioner appealed to this court. Federal jurisdiction and United States STANDING in court is in dispute.

CASE NO. II

On September 28, 1978, District Director I.R.S. Arturo A. Jacobs, sent Petitioner a Notice of Deficiency and a "waiver of restrictions on assessment and collection of deficiency in tax and acceptance of overassessment." Petitioner did not sign the waiver. Under duress, stated in Mr. Jacobs letter, Petitioner petitioned

United States Tax Court to redetermine his alleged tax. On November 22, 1982, U.S. Tax Court, J. Korner, "Judge", filed its memorandum, Findings of Fact and Opinion. Petitioner appealed to U.S. Court of Appeals but failed to perfect his appeal. Appeal was dismissed. Newly discovered evidence has emerged. On June 24, 1984, Revenue Officer, Linda Jernigan, demanded payment of alleged tax. Petitioner did not pay.

On July 23, 1984, Revenue Officer Jernigan signed affidavid in support of application to enter and seize property. On July 25, 1984, U.S. magistrate Calvin Gould signed Order for Entry on Premises to effect Levy. On July 26, 1984, Revenue officers entered property in Richfield, Utah and, with aid of tow trucks, locally hired, took three vehicles from driveway of residence of Petitioner, then went to a farm, not particularly described in the Order for Entry, and took an Airstream

Traveltrailer. On July 30, 1984, Revenue Officer Jernigan signed a second affidavit in support of an application to enter and seize property. On July 31, U.S. Magistrate Calvin Gould signed a second Order for Entry on Premises to effect Levy. On August 2, 1984, Revenue Officers entered the farm above mentioned and with chains and locks, chained and locked farm machinery and equipment, drilled the lock on a locked building, changed the lock and kept the keys to the new lock. On August 14, 1984 Petitioner filed motion in U.S. District Court, District of Utah, Central Division for evidentury hearing and to vacate the magistrate's orders. Motion to vacate was denied. Petitioner appealed to U.S. Court of Appeals for the Tenth Circuit. On November 28, 1984, I.R.S. agents sold the seized property without court order. On March 4, 1985, the court of appeals affirmed the judgment of the District Court.

Two petitions for rehearing were timely filed in the court of appeals. Both were denied.

Federal jurisdiction to assess, to [illegible] and United States standing in court as in dispute.

ARGUMENTS

Writ for certiority should be granted because the laws of the United States have not been followed, the District Courts have sanctioned the violations of law and the court of appeals has so far sanctioned the District Courts departure from their duty to enforce the law and protect the rights and property of petitioner as to call for an exercise of this court's power of supervision. Amplified reasons for granting writ are:

PETITIONER IS NOT REQUIRED TO MAKE RETURNS

The courts attention is directed to the exception in 26 U.S.C. Sec. 6012

(1) (A) "...except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C))" and to subparagraph (C) of said section, explained as follows:

1. Petitioner is not a nonresident alien individual and therefore not referred to in (i) of subparagraph (C).

2. Petitioner is not a citizen of the United States entitled to the benefits of Sec. 931. Sec. 931 refers to citizens who have income from sources within the possessions of the United States. Further Sec. 931 (C) says "Definition- for purposes of this section, the term Possessions or the United States does not include the Commonwealth of Puerto Rice, the Virgin Islands of the United States or Guam." Since Petitioner did not have income from a source within a possession of the United States other than the Commonwealth of Puerto Rico, the Virgin Islands of the

United States or Guam he was not referred to in (ii) of subparagraph (C).

3. Petitioner was not an individual making a return under section 443 (a) (1) for a period of less than 12 months on account of a change in his annual accounting period, and therefore was not referred to in (iii) of subparagraph (C).

4. Petitioner was not an individual who had income (other than earned income) of $1,000 or more and who is described in Sec. 63 (e) (1) (D). Sec. 63 (e) (1) (D) refers to an individual with respect to whom a deduction under Sec. 151 (e) is allowable to another taxpayer for a taxable year beginning in the calander year in which the individual's taxable year begins. No one was entitled to a deduction for petitioner therefore petitioner was not referred to in (iv) of subparagraph (C).

5. Petitioner was not an estate nor a trust and therefore not referred to in

(v) of subparagraph (C). For the above reasons, i. e., that he was not referred to in subparagraph (C), he was excepted from making returns.

PETITIONER IS NOT THE PERSON DEFINED AS THE PERSON REQUIRED TO MAKE RETURNS

The Court's attention is direct to 26 U.S.C. Sec. 7343. DEFINITON OF TERM "PERSON". Sec. 7343 of Chapter 75 defines the person used in Sec. 7203 of Chapter 75. "WILFUL FAILURE TO FILE RETURNS, SUPPLY INFORMATION, OR PAY TAX."

Obviously, the person referred to in 26 U.S.C. Sec. 7203 is the officer or employees of a corporation or the officer or member of a partnership who, as such officer, employee, or member is under a duty to perform the act of making a return for his respective corporation or partnership. Petitioner was not such an officer, employee or member of a corporation or partnership who was under such duty and

was therefore not the person described in 26 U.S.C. Sec. 7203.

CONSTITUTIONAL REASONS WHY PETITIONER WAS EXCEPTED FROM MAKING RETURNS

There are several constitutional reasons why petitioner was excepted from making returns, any one of which would bar congress from requiring him to do so.

1. Congress is limited in its powers to those powers delegated to it by the Constitution. See Amendment ten, U.S. Const. and this courts decision in U.S. v. Butler.

> "The question is not what power the Federal Government ought to have but what powers in fact have been given by the people. ...The federal union is a government of delegated powers. It has only such as are reasonably to be implied from those granted. In this respect we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restrictions except the descretion of its members." United States v. Butler, 297 U.S. 1 at 63.

The power to require Petitioner to make

returns of income has not been delegated to the United States, nor is it reasonably to be implied from the power to lay and collect taxes, an entirely different subject.

2. Congress is limited in its power to make laws, which shall be necessary and proper for carrying into execution the powers delegated to the United States by this Constitution. Article 1, Sec. 8, Clause 18, U.S. Const.

Any law which encroached upon Petitioner's rights would not be a necessary nor proper law. Therefore a law which encroached upon Petitioners right to liberty, would not be a necessary nor proper law.

Liberty is defined as:

> LIBERTY. Freedom; exemption from extraneous control. Blacks Law Dictionary.
>
> LIBERTY. Freedom of the will; exemption from compulsion or restraint in volition. Dictionary of the English Language (1860).

> LIBERTY. The ability or opportunity to act in accordance with one's own wishes or without repression or restraint by authority. Funk & Wagnalls Encyclopedia College Dictionary.

Petitioner would not be free if congress could make a law which put him under the extraneous control of public employees, compel him to do an act which was against his will, nor deny him the opportunity to act in accordance with his own wishes, so long as he does not respass upon the rights of the public.

A law which encroached upon Petitioner's right to privacy would not be a necessary nor proper law.

This court has said:

> "We have recognized that the principal object of the Fourth Amendment is the protection of privacy..." Warden v. Hayden, 387 U.S. 294 304 (1967).

Petitioner would not have privacy if congress could make a law requiring him to make returns to public employees of his private financial information.

Congress has not been delegated the

power to search the people for their private information and this court recognized the duty of federal officials and the courts to protect the people against all unreasonable searches as follows:

> The effect of the 4th Amendment is to put Courts of the United States and Federal Officials, in the exercise of their power and authority, under the limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, homes, papers, and effect against all unreasonable searches and seizures under the guise of law. This protection reaches all alike whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of laws. Weeks v. United States, 232 U.S. 383.

A law which encroached upon Petitioner's right to be free from involuntary servitude would not be a necessary nor proper law.

Involuntary servitude is defined as follows:

> INVOLUNTARY SERVITUDE. The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another,

whether he is paid or not. Blacks Law Dictionary.

Since there is labor involved in keeping records and making returns, a law which required Petitioner to do such labor against his will would not be a necessary and proper law.

In summation--Petitioner is not referred to in subparagraph (C) of 26 U.S.C. Sec. 6012 and is therefore excepted from making returns. Petitioner is not the person described in 26 U.S.C. Sec. 7203 as defined in 26 U.S.C. Sec. 7343. Congress is not delegated the power to require Petitioner to make returns. Congress may only make necessary and proper laws. Laws which encroach upon Petitioner's rights are not necessary and proper laws. Therefore Petitioner was not and cannot be required to make returns of income. For this reason the United States had no standing in court to prosecute Petitioner. They had no legal right to the remedy sought. The

judgment is therefor fraudulent. And the order to sell Petitioners silver to pay the fraudulent fine is likewise fraudulent. As is the order and judgment of the court of appeals in affirming the District Court's order, all of which was in violation of due process of law.

For the above reasons this court should search the records for the above described errors.

CASE NO. II

Case No. II involves the taking and selling of property worth more than $200,000 from Petitioner and his relatives, by the I.R.S., for alleged taxes due from Petitioner, on two writs of entry to effect levy issued by U.S. Magistrate Gould of the United States District Court, District of Utah, Central Divison. Petitioner assigns errors in due process of law as follows:

Petitioner is an individual citizen

of the United States, excepted from making returns of income by Constitutional rights and immunities and by 26 U.S.C. Sec. 6012. (see Case No. 1) Petitioner did not make returns for the years covered by this case.

THE SECRETARY LACKS AUTHORITY TO MAKE RETURNS FOR PETITIONER

Attention is directed to 26 U.S.C. Sec. 6020. This Court will please take notice that Petitioner did not consent to disclose all information necessary, nor did he sign any return prepared by the Secretary under Sec. 6020 (a). In the absence of such consent and signature by Petitioner, the Secretary may execute a return for Petitioner, only if Petitioner is required to make such return, under Sec. 6020 (b), and may sign such return under Sec. 6020 (b) (2). Petitioner denies that such properly signed returns exist because Petitioner did not make and sign such returns and the Secretary only had authority to do so if Petitioner was required.

"...Any return so made and subscribed by the Secretary shall be prima facia good and sufficient for all legal purposes." (see Sec. 6020 (b) (2)) Further, such returns would be essential as evidence in the prosecution of Petitioner under Sec. 7203 and also essential as evidence in tax Court proceedings.

The absence of such properly signed returns leaves both proceedings wanting lawful evidence and lacking due process of law.

This Court should therefore search the records of both cases for properly signed returns.

SECRETARY LACKS ASSESSMENT AUTHORITY TO ASSESS PETITIONER

Attention is directed to 26 U.S.C. Sec. 6201 ASSESSMENT AUTHORITY."... Such authority shall extend to and include the following. Properly applied, all other authority not specifically stated, is

excluded.

Sec. 6201 (a) (1) says "The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title." Specific reference is made to returns or lists are made under this title." As stated above the Secretary had no authority to make returns for Petitioner. There are no returns made by the Secretary. There are no returns made by Petitioner. There are no lists, therefore Sec. 6201 gives no authority to assess Petitioner.

Sec. 6201 (d) says "For special rules applicable to defiencies of income, estate, gift, and certain excise taxes, see subchapter B." A rule is not an authority. All authority to assess must appeal under assessment authority and if not included there it is excluded. Supra.

Under Sec. 6215, it says "If the taxpayer files a petition with the tax court the entire amount determined as the

deficiency by the decision of the tax court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary." Unlawful decisions never become final. Further, Sec. 6215 is merely a command that an act be done. It is not an authority to do the act.

For example: A statement that a bank shall be robbed, does not carry with it the authority to do so.

Likewise, a statement that the entire amount determined as the deficiency by the decision of the tax court which has become final shall be assessed does not carry with it the authority to assess said tax court decisions.

This Court should search the records of this case for authority to assess tax court decisions. Said authority is essential to due process.

ALLEGED RECORD OF ASSESSMENT MISSING

It is alleged that an assessment of petitioner's tax liability was made on March 3, 1983. (Findings of fact, C 84-731W page 2.) Attention is directed to 26 U.S.C. Sec. 6203. Which says in part, "Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment."

Petitioner has made two requests for a copy of the record of the assessment. One on July 10, 1984 and another on July 12, 1985. A fee was paid with the request made on July 12, 1985.

Request was made that the copies of the record of the assessments be certified for court of administrative use. Further, Federal Tax Regulation Sec. 301, 6203-1 requires that the records of assessment be signed by an assessment officer and the amount shown on the record shall be the tax shown on a return by the taxpayer

and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. There is no return executed by the Secretary in evidence. Petitioner has not received the certified copies of the records of the assessment properly signed by an assessment officer.

Petitioner has received certificates indicative that such records do exist but not the signed copies as provided for in 26 U.S.C. Sec. 6203. By reason that the Secretary does not have authority to make a return for Petitioner because Petitioner is not required to make a return and that the Secretary lacks authority to assess Petitioner without such return, Petitioner believes that no record of the assessment exists, or that if it does exist it is fraudulent. This court should research the records of this case for the missing record of the assessment and supporting records or the fraudulent records of the

assessment. These documents are essential to due process.

PETITIONERS LIABILITY NOT ESTABLISHED

It is alleged that Petitioner's personal tax liability for the years 1973 through 1977 was determined by the United States Tax Court. (Findings of fact C 84 731 # page 1) Petitioner denies the truth of said statement. To be liable for a tax there must be a law stating that Petitioner is liable to pay a specific tax imposed upon him or his property. The Tax Court decision merely, and erroneonsly, determined that the alleged taxes were properly imposed not that Petitioner was liable to pay them. This court said:

> Our system of taxation is based upon voluntary assessment and payment not upon distraint. Flora v. United States, 362 U.S. 145 at 176.

So long as our system of taxation is based upon voluntary assessment and payment there can be no liability to make a

voluntary assessment of one's self nor make a voluntary payment. Petitioner cannot be made liable to do a voluntary act.

This Court's ruling in Flora proves that there is no law imposing liability upon Petitioner to pay alleged taxes. Also the above exception of Petitioner from making returns, the absence of authority to make returns for Petitioner, the absence of assessment authority to assess Petitioner without properly made and signed returns, and the absence of a properly signed record of the assessment all prove that Petitioner's personal tax liability for the years 1973 through 1977 has not been lawfully determined.

If there was a law making Petitioner liable to pay taxes imposed upon his income, such taxes would become direct taxes, unconstitutional under Article I, Sec. 2, Clause 3 and Article I, Sec. 9, Clause 4 of the Constitution unless apportioned.

Amendment 16 to the Constitution did not amend the above two clauses of the Constitution. There are no words of amendment of said clauses in Amendment 16.

Excises may be laid and collected upon corporate privilege or upon use of a public owned facility such as highways, but not upon the right to use one's own property, i.e. wages, which right has existed long antecedent to the organization of the state, and is not a grant from the state.

PROPERTY SOLD WITHOUT COURT ORDER

Attention is directed to 28 U.S.C. Sec. 2463. "Property taken or detained under any revenue law of the United States ...shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." Property of Petitioner and his relatives was alleged to have been taken under 26 U.S.C. Sec. 6331, an alleged revenue law of the

United States. If so, it shall be deemed to be in the custody of the law and subject only to the orders and decrees of the court of the United States having jurisdicton thereof. In this case the taken property' would be subject only to the orders and decrees of the United States District Court for the District of Utah. Petitioner denies that there is an order of the United States District Court for the District of Utah ordering the sale of the above mentioned property, this Court should therefore search the records of this case for a court order ordering the sale of the above mentioned property, or for the absence of such order.

SUMMATION

In summation this court should search the records in this case for: (1) Authority of the Secretary to make returns for Petitioner. (2) For authority to assess Petitioner without properly made and signed

returns. (3) For a properly signed record of the assessment and supporting records. (4) For a law imposing liability upon Petitioner to pay the alleged taxes. (5) For an order of the District Court of Utah ordering the sale of the propertly. In the absence of the above documents the taking of Petitioner's property was theft by deception and not a taking by due process of law. (see Amendment 5, U.S. Const)

CONCLUSION

For the above reasons the petition for writ of certiorari should be granted.

Respectfully submitted,

Edward D. Christensen
Petitioner in Prornia Persona

CERTIFICATE OF SERVICE

I hereby certify that I mailed three copies of the foregoing Petition For a Writ of Certiorari to the Solicitor General of the United States, Department of Justice Washington, D. C. 20530 on Dec. ____, 1985 Postage prepaid.

Edward D. Christensen
Petitioner Pro Per

APPENDIX

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
OCT. 27 12:53 PM '83

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATE OF AMERICA Plaintiff, vs. EDWARD D. CHRISTENSEN Defendant	)	Civil Misc. No. 83-19J O R D E R

Edward D. Christensen was convicted in the Western District of Washington of three counts of violation of 26 U.S.C. § 7203. Mr. Christensen did not appeal his conviction. On February 10, 1978, Mr. Christensen was sentenced to eight months imprisonment on each count, the terms of imprisonment to run consecutively, and to pay a fine of $5,000. on each count.

Mr. Christensen has failed to pay any of the $15,000. fine and the United States has registered its judgment against Mr. Christensen for the Fifteen Thousand Dollars ($15,000.) in the District Court of Utah, Central Division.

Mr. Christensen was ordered to appear before the United States Magistrate for the District of Utah for a supplemental proceeding on August 26, 1983. At that proceeding, Mr. Christensen appeared pro se and the United States was represented by Tena Campbell, Assistant United States Attorney. During questioning of Mr. Christensen, Ms. Campbell asked:

(Q) Mr. Christensen, do you personally hold title to any gold or silver?

(A) Yes, I have some silver.

(Q) How much silver do you have?

(A) Something over a thousand ounces.

(Q) And where is that kept?

(A) In Richfield.

(Q) Is that kept by a broker or what sort of organization?

(A) No. It's kept personally. (Transcript of August 26 proceeding, 30-31).

Through additional questioning, Mr. Christensen admitted that the silver was hidden on the farm that he operated in Sevier County, Utah.

At the conclusion of the supplemental proceeding, the United States Magistrate ordered Mr. Christensen to give the Clerk of the United States District Court, District of Utah, the 1,000 ounces of silver in question. The clerk would hold the silver pending final disposition of the matter. Mr. Christensen was given twenty days to comply with the Magistrate's order and turn over the silver

Mr. Christensen, on August 30, 1983, filed a notice of appeal from the Magistrate's order. Mr. Christensen subse-

quently filed objections to the order and various motions seeking relief from the order.

On September 29, 1983, Mr. Christensen, appearing pro se, and Assistant United States Attorney Tena Campbell appeared before the Court on a scheduling conference. At that time, the Court ordered that all motions in the matter and Edward D. Christensen's appeal from the Magistrate's order would be heard by the Court on October 4, 1983. The Court further ordered that pending the Court's decisions on the motions and the appeal, Mr. Christensen was not to dispose of, or in any manner or by any means, encumber the 1,000 ounces of silver.

Mr. Christensen then filed a series of motions with the Court, including motions to disqualify Judge Jenkins from hearing the matter on the grounds of bias or prejudice, motions objecting to the

jurisdiction of the Court, and various other motions asserting the contention that Mr. Christensen's 1978 conviction was invalid on the grounds that federal reserve notes were not lawful obligations of the United States.

On September 29, 1983, the United States Marshal served a writ of execution on Mr. Christensen seeking to obtain the 1,000 ounces of silver. Mr. Christensen refused to honor the writ.

At the October 4, 1983 hearing, Mr. Christensen appeared pro se and the United States was represented by Assistant United States Attorney Tena Campbell. The Court heard argument from both parties on all motions filed.

After due consideration of the oral arguments and the documents filed by the parties, this Court makes the following Order:

1. Defendant's affidavits of

bias and prejudice are DENIED as being legally insufficient.

2. Defendant's motion to disqualify the judge is DENIED.

3. Defendant's motion to dismiss for lack of jurisdiction in the original court is DENIED.

4. Defendant moved to set aside the Magistrate's order on the following grounds:

a. The Magistrate's order constitues cruel and unusual punishment.

b. The original sentence upon which the order was based was too harsh and was based upon criminally false evidence.

c. The Magistrate's order requires the taking of private property without just compensation.

d. The action by the Magistrate is illegal because it is based upon an effort by the government to place the defendant in involuntary servitude.

e. The Magistrate lacked jurisdiction over the person and the subject matter of the lawsuit.

f. The Magistrate's order is based upon an illegal assumption: that Federal Reserve Notes are lawful money of the United States.

After carefully reviewing these grounds on the record, this Court DENIES defendant's motion to set aside the Magistrat's order.

5. Defendant's claim for injunctive relief is DISMISSED for failure to state a claim upon which relief can be granted.

6. Defendant's claim for declaratory relief is DISMISSED for failure to state a claim upon which relief can be granted.

7. Defendant's counterclaim against the United States is DISMISSED for failure to state a claim upon which relief can be granted.

THEREFORE, it is ORDERED that

1. The Magistrate's order is affirmed, and that

2. Edward D. Christensen surrender to the Clerk of the United States Dis-

trict Court, District of Utah, within five (5) days following October 4, 1983, the 1,000 ounces of silver that were the subject of the United States Magistrate's order dated August 29, 1983.

3. This formal order is entered to memorialize what was done on the record at the hearing. Edward D. Christensen did in fact deposit with the Clerk of the Court certain quantities of silver dollars on October 12, 1983. Thereafter, defendant filed a motion to reconsider the order of this Court, that motion has been set for hearing on November 21, 1983, at the hour of 1:30 P. M.

DATED this 26 day of October, 1983.

BY THE COURT:

/s/ Bruce S. Jenkins
BRUCE S. JENKINS
United States District Judge

Copies mail to counsel; mc

Tena Campbell, AUS
Edward D. Christensen

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
OCT. 17 11:41 AM '84

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA	:	
Plaintiff,	:	Misc. No. 83-19J
vs.	:	
EDWARD D. CHRISTENSEN,	:	ORDER
Defendant.	:	

On September 24, 1984, a hearing was held on the United States' Motion for an order to sell 1,293 silver dollars presently held by the Clerk of the United States District Court and the United States Marshal. Mr, Edward D. Christensen appeared pro se at the hearing; Assistant United States Attorney Tena Campbell

represented the United States. Argument was heard from both parties.

THE COURT HEREBY ORDERS that:

1. The United States may sell as many of the 1,293 silver dollars as needed to satisfy the $15,000 fine against Mr. Christensen in favor of the United States.

2. The United States is to sell no more of the silver dollars than necessary to satisfy the judgment.

3. The sale of the silver dollars is to take place after notice of the sale and a public posting of the sale is given.

4. The sale is to take place at a public auction.

5. The silver dollars are to be sold for not less than the appraised value of the coins as given in the appraisal on October 26, 1983.

6. Those persons who made the appraisals of October 26, 1983, are not to bid upon the coins at the auction.

EXECUTED this 1 day of October,

1984,

BY THE COURT:

/s/ Bruce S. Jenkins
BRUCE S. JENKINS, Judge
United States District Court

Copies mailed to counsel 10/17/84: mw
Tena Campbell, AUSA
Edward D. Christensen, Pro Se

FILED
United States Court of Appeals
Tenth Circuit
MAR 04 1985

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee, v. EDWARD D. CHRISTENSEN, Defendant-Appellant.	No. 84-2459 (D.C. No. 83-19J (D. Utah)

ORDER AND JUDGMENT

Before HOLLOWAY, Chief Judge, LOGAN, Circuit Judge, and MOORE, District Judge.*

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*The Honorable John P. Moore, United States District Judge for the District of Colorado, sitting by designation.

In accordance with 10th Cir. R. 9(e) and Fed. R. App. P. 34(a), this appeal came on for consideration on the briefs and record on appeal.

This matter is before the court on def-

endant's appeal from an order of the district court directing the sale of 1,293 silver dollars belonging to the defendant. The proceeds of the sale are to go toward satisfaction of a $15,000 judgment fine against defendant.

Having fully considered the arguments made on appeal in opposition to the sale, we find that the district court's judgment should be affirmed. See 10th Cir. R. 17(b).

The judgment of the United States District Court for the District of Utah is AFFIRMED.

The mandate shall issue forthwith.

/s/ Howard K. Phillips
HOWARD K. PHILLIPS, Clerk

November 22, 1982

T. C. Memo. 1982-672

UNITED STATES TAX COURT

EDWARD DEAN CHRISTENSEN, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 6718-79 Filed November 22, 1982.

Edward Dean Christensen, pro se.

Randy G. Durfee, for the respondent.

MEMORANDUM FINDINGS OF FACT
AND OPINION

KÖRNER, Judge: Respondent determined deficiencies against petitioner in individual income tax, plus additions to tax, for the calendar years 1972 through 1977 as follows:

TAXABLE YEAR ENDED DECEMBER 31	DEFICIENCY IN INCOME TAX	ADDITIONS TO TAX UNDER SECTIONS[1] 6651(a)	6653(a)	6653(b)
1972	$ 13,486.69	$ -0-	$ -0-	$ 6,743.35
1973	22,024.63	-0-	-0-	11,012.31
1974	16,629.20	-0-	-0-	8,314.60
1975	22,178.98	5,544.75	1,108.95	-0-
1976	14,603.41	3,650.85	730.17	-0-
1977	427.00	106.75	21.35	-0-

All such amounts are in dispute, together with a claimed overpayment by petitioner for the year 1972 of income tax in the amount of $11,783.30.

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[1] All section references are to sections of the Internal Revenue Code of 1954, as in effect in the years in issue, and all references to Rules are to the Rules of Practice and Procedure of the Tax Court, unless otherwise stated.

FINDINGS OF FACT

Some of the facts herein have been stipulated and are so found. The stipulation of facts and exhibits attached thereto are incorporated herein by this reference.

During the years 1972 through 1977, petitioner was a single individual, and resided for some undisclosed part of the period in the State of Utah, and resided in the State of Washington for another undisclosed part of the period. At the time of filing his petition herein, petitioner was a resident of Salt Lake City, Utah.

Petitioner timely filed U.S. individual income tax returns for the years 1968, 1969, 1970, and 1971. Petitioner did not file income tax returns for the years 1972 through 1977. On or about October 26, 1979, petitioner mailed to respondent's Service Center at Ogden, Utah, Forms 1040, exe-

cuted by him, and purporting to be his individual income tax returns for the years 1972 through 1977. Aside from his name, address and social security number, none of said forms contained any information from which petitioner's taxable income and tax liability could be determined.

During the taxable years 1972, 1973, 1974, 1975, and in the year 1976 up to the month of July, when he retired, petitioner was employed as a commercial airline pilot for United Airlines. In July, 1976, petitioner retired from this employment and thereafter, in 1976 and 1977, received retirement pension payments from United Airlines. The salary paid to petitioner by United Airlines during his period of employment and prior to his retirement was as follows:

YEAR	GROSS SALARY
1972	$ 44,403.86
1973	45,214.52
1974	47,643.66
1975	55,471.63
1976	32,478.33

For and during each of the years 1973, 1974, 1975 and 1976, petitioner filed an exemption certificate on Form W4-E with his employer, United Airlines, in which petitioner certified under penalties of perjury that he had incurred no Federal income tax liability for the immediately preceding year, and that he anticipated no such liability for the current year. As the result of these actions by petitioner, United Airlines withheld only $1,356.02 from petitioner's salary on account of Federal income tax for 1973, and withheld nothing on account of Federal income tax from petitioner's salary for the years 1974, 1975 and 1976.

In the year 1955, petitioner purchased a parcel of real estate near Elgin, Illinois, at an undisclosed price. On October 31, 1972, petitioner sold 3.507 acres of this tract, for cash, and received $65,000 in sales proceeds. In the

year 1973, a further portion of this tract, consisting of 13,842 acres, was sold by petitioner for an undisclosed price. In 1976, petitioner sold a further portion of the above tract for an undisclosed price.

On January 18, 1978, after a trial by jury in the United States District Court for the Western District of Washington, petitioner was found guilty of willful failure to file U.S. individual income tax returns for the calendar years 1972, 1973 and 1974, under the provisions of section 7203.

In his statutory notices of deficiency for the years involved herein, respondent determined that petitioner had unreported gross income in each of the years from various specific sources, including, inter alia, petitioner's salary and pension from United Airlines, dividends, capital gains, and income or loss from partnership distributions. Respondent accordingly determined deficiencies and further determined additions to tax

under section 6651(a) and 6653(a) for the years 1975, 1976 and 1977, and under section 6653(b) for the years 1972, 1973 and 1974, as set forth in the first table given above herein.

Petitioner's failure to file income tax returns for the years 1972, 1973, and 1974 was willful and was done fraudulently with the intent of evading tax. Petitioner's esecution and filing of false withholding exemption certificates for the years 1973 and 1974 was likewise done fraudulently with intent to evade tax. Part of the underpayment of tax required to be shown on petitioner's income tax returns for each of the years 1972 through 1974 was due to fraud.

OPINION

At no time -- either in his petition to this Court, at trial or on brief -- has petitioner alleged any factual error with respect to respondent's determinations as to petitioner's income, deductions, exemp-

tions or tax. Instead, petitioner, in his petition herein as well as in two pretrial memoranda which were filed with the Court, has raised a host of legal objections to respondent's actions herein, all of which are insubstantial and meritless, and all of which have previously been rejected by this and other courts, to the point where such issues may now fairly be characterized as frivolous.[2] Of this plethora of worthless

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[2] As raised by the petition herein, such frivolous legal issues included the following: (a) nothing other than gold or silver is lawful money, therefore determining petitioner's income and resulting tax deficiencies in anything other than gold and silver constitutes taking property without compensation within the meaning of the Fifth Amendment to the Constitution; (b) forcing petitioner to pay such deficiencies constitutes involuntary servitude within the meaning of the Thirteenth Amendment to the Constitution; (c) this Court is not a court, is unconstitutionally constituted and lack jurisdiction over the subject matter of this controversy; (d) the income tax laws do not apply to natural persons such as petitioner nor to his wages; (e) the questions promulgated on respondent's Form 1040 are unconstitutional; (f) petitioner has been unconstitutionally deprived of his right to a jury trial before this Court. The petition also claims an overpayment in the amount of $11,783.30, but alleges no factual or legal basis in support thereof.

legal issues, only three survived the trial process and were perpetuated into petitioner's briefs, and the rest are therefore deemed to be abandoned. The three issues which survived, and our disposition of them, are as follows:

(a) The principal "constitutional" issue upon which petitioner relies is the proposition that only gold and silver is lawful money of the United States; that it is unconstitutional and illegal for the United States Government, the Federal Reserve System or any branch thereof to issue and circulate anything other than gold or silver dollars as lawful money, i.e., legal tender; that it is therefore improper for respondent to determine petitioner's income, deficiencies of tax and additions to tax in anything other than gold or silver, or even to require that tax returns be filed on any basis other than gold or silver, with the result that all of respondent's determinations herein are unconstitu-

tional, illegal and even criminal, and must therefore be set at naught by this Court. Such arguments are merely refinements and variations on a theme which has been litigated many times previously before this and other courts, with results uniformly opposed to petitioner's position, and we therefore summarily reject them. United States v. Rickman, 638 F.2d 182 (10th Cir. 1980); Ware v. United States, 608 F.2d 400 (10th Cir. 1979); United States v. Anderson, 584 F.2d 369 (10th Cir. 1978).

(b) Petitioner further argues that in any event the wages or salaries of natural citizens (as opposed to the income of corporations) are not subject to the income tax. The law is so clearly to the contrary that this can no longer be considered a serious issue. Eisner v. Macomber, 252 U.S. 189 (1920); Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955); United States v. Slater, 545 F. Supp. 179 (D. Del. 1982);

Graf v. Commissioner, T.C. Memo. 1982-317.

(c) In spite of the denial of his two prior motions, and in spite of the Court's explanation thereof to petitioner at trial, petitioner persists in demanding a jury trial before this Court. Such a procedure is neither provided for by our enabling statutes, see section 7453, nor is it constitutionally mandated. Olshausen v. Commissioner, 273 F.2d 23 (9th Cir. 1959), cert. denied 363 U.S. 820 (1960); Blackburn v. Commissioner, 681 F.2d 461 (6th Cir. 1982).

As to all the deficiencies and additions to tax determined by respondent in this case, other than the additions to tax under section 6653(b), the burden of proof in this case is upon petitioner to show error in the respondent's determinations, Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). Since petitioner neither pleaded nor proved any factual error in respondent's

determinations, and his legal positions being without merit, as we have noted, we hold that he has failed to carry his necessary burden of proof on these issues, and respondent's determinations of deficiency in tax under section 6651(a) and 6653(a) for the years 1975, 1976 and 1977, are therefore sustained.

With respect to the asserted additions to tax under section 6653(b)[3] for the years 1972, 1973 and 1974, the situation is different. Here, the respondent has the burden of proff, and he must carry that burden by clear and convincing evidence. Section 7454(a), Rule 142(b). Respondent's determinations in this regard are not evidence, nor are unadmitted allegations in pleadings.

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[3]The relevant portion of section 6653(b) reads as follows:

(b) Fraud.- If any part of any underpayment (as defined in subsection (c) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

Rule 143 (b); Kashat v. Commissioner, 229 F.2d 282 (6th Cir. 1956); Drieborg v. Commissioner, 225 F.2d 216 (6th Cir. 1955).

Fraud, as used is section 6653(b), means actual intentional wrongdoing. Mitchell v. Commissioner, 118 F.2d 308 (5th Cir. 1941). The intent required is a voluntary, intentional violation of a known legal duty; in this case, to evade a tax believed to be owing. Stoltzfus v. United States, 398 F.2d1002, 1004 (3rd Cir. 1968), cert. denied 393 U.S. 1020 (1969); Estate of Temple v. Commissioner, 67 T.C. 143, 159 (1976), appeal dismissed (5th Cir. 1977). Where direct evidence of fraudulent intent is not available, its existence may be determined from the conduct of the petitioner and the surrounding circumstances. Stone v. Commissioner, 56 T.C. 213, 223-224 (1971); Otsuki v. Commissioner, 53 T.C. 96 (1969). The Supreme Court has stated that an "affirmative willful attempt may be inferred from * * * any conduct, the likely effect of

which would be to mislead or conceal." Spies v. United States, 317 U.S. 492, 499 (1943).

Viewing the record herein in light of the above legal standards, we conclude that respondent has carried his necessary burden of proof to establish petitioner's fraud within the meaning of section 6653(b) for the years 1972, 1973 and 1974. Respondent has proved, and we have found, the amount of salary received by petitioner from United Airlines in 1972, 1973 and 1974, in amounts clearly sufficient to require petitioner to file returns for those years. Section 6012. For the year 1972, in addition to proving the amount of petitioner's salary, respondent also proved that petitioner's salary, respondent also proved that petitioner received $65,000 from the sale of a capit.l asset, which by itself would have been called for the filing of a tax return, even if no gain had resulted from

the sale. Petitioner was an educated man holding a responsible position as an airline pilot for United Airlines, and it cannot be and is not argued that he was unaware of his return-filing requirements, as is shown by the fact that he timely filed his individual income tax returns for the years 1968 through 1971. That petitioner's failure to file returns for 1972, 1973 and 1974 was willful is proved by his conviction for failing to file returns for those same years under the provisions of section 7203, and establishes that his failure to file involved the "voluntary, intentional violation of a known legal duty," involving the element of bad faith or evil intent. See United States v. Bishop, 412 U.S. 346, 360 (1973).[4]

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[4] The Forms 1040 filed by petitioner with respondent in 1979, with respect to the years before us, containing no information from which his tax liability could be ascertained, are clearly not returns of income within the meaning of the law. United States v. Porth, 426 F.2d 519 (10th Cir. 1970); United States v. Rickman, supra.

Petitioner's consistent and blatant failure to file returns, based on nothing more than the "tax protester" grounds which, we are satisfied, petitioner knew were frivolous, supports a finding of fraud, cf. Fuhrmann v. Commissioner, T.C. Memo. 1982-255, as does the consistent failure to report substantial amounts of income. See Estate of Mazzoni v. Commissioner, 451 F.2d 197 (3d Cir. 1971); Schwarzkopf v. Commissioner, 246 F.2d 731 (3d Cir. 1957).

Respondent has also proved that petitioner filed withholding certificates with his employer for 1973 and 1974, falsely certifying that he had incurred no tax liability for the immediately preceding year and that he anticipated no tax liability for the current year. It is clear that these were affirmative fraudulent acts. Compare Nielson v. Commissioner, T.C. Memo. 1980-453; Fuhrmann v. Commissioner, supra.

We conclude that respondent has carried his burden of proof and has estab-

lished that petitioner fraudulently intended to evade taxes that he knew were due and owing for the years 1972, 1973 and 1974, and that additions to tax for those years under sections 6653(b) are therefore properly imposed. Cf. Gaar v. Commissioner, T.C. Memo. 1981-696; Fuhrmann v. Commissioner, supra.

Decision will be entered for the respondent.

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
OCT. 17 9:40 AM '84

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH

CENTRAL DIVISION

IN THE MATTER OF THE TAX INDEBTEDNESS OF EDWARD D. CHRISTENSEN	:	C-84-731 W
	:	O R D E R

Based on the finding of fact and conclusions of law entered herein,

IT IS HEREBY ORDERED that the motion of Mr. Christensen to vacate the writs of entry executed by the magistrate in Misc. No. 84-125 and Misc. No. 84-126 is denied.

DATED this 16th day of October, 1984.

Copies mailed
to counsel 10-17-84cn

BY THE COURT:

C. William Ryan, Esq.
Edward D. Christensen,
Pro Se
0285Y

/s/ David K. Winder
DAVID K. WINDER, Judge
United States District Court

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
OCT 17 9:40 AM '84

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH

CENTRAL DIVISION

IN THE MATTER OF THE TAS INDEBTEDNESS OF EDWARD D. CHRISTENSEN	:	C-84-731 W
	:	FINDINGS OF FACT AND CONCLUSIONS
	:	OF LAW

This matter came on for hearing before the court on October 5, 1984, on the motion of Edward D. Christensen to vacate two Internal Revenue Service writs of entry executed in Misc. No. 84-125 and Misc. No. 84-126, and for evidentiary hearing. At that time, Mr. Christensen, acting pro se, and the Internal Revenue Service through its counsel, C. William Ryan, assistant United States attorney, introduced evidence with respect to the writs of entry, including the affidavits of the Internal Revenue

Service revenue officer upon which the writs were based.

The court, having considered the evidence received and the arguments of the parties, hereby enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On November 22, 1982, Mr. Christensen's personal tax liability for the years 1973 through 1977 was determined by the United States Tax Court, Docket No. 6718-79 as follows:

1973	$22,024.63
1974	16,629.30
1975	22,178.98
1976	14,603.41
1977	427.00

In addition to these amounts, the tax court entered judgment for statutory additions under 26 U.S.C. § 6651(a), § 6653(a) and § 6653(b).

2. On March 3, 1983, the Internal Revenue Service assessed Mr. Christensen's tax liability for the years 1973

through 1977 based on said tax court decision. The total amount assessed was $165,053.73.

3. On March 21, 1983, the Internal Revenue Service sent Mr. Christensen, at his last known address, notice of said assessments and a demand for payment.

4. Mr. Christensen thereafter refused or neglected to pay the assessed tax.

5. On June 25, 1984, Revenue Officer Linda Jernigan sent out another notice and demand for payment to Mr. Christensen at his home address of 387 North 300 East, Richfield, Utah. Said home is located in Sevier County, Utah.

6. On June 29, 1984, and on Fedruary 8, 1984, Internal Revenue Service filed with the Sevier County Recorder liens on all property of Mr. Christensen.

7. On or before July 23, 1984, Revenue Officer Linda Jernigan visited Mr. Christensen's home at 387 North 300 East,

Richfield, Utah, and saw recreational vehicles, motor vehicles and miscellaneous personal property located thereon.

8. On July 25, 1984, Revenue Officer Jernigan filed an affidavit with the United States magistrate which set forth the foregoing assessment, notice and demand, failure to pay, filing of tax liens, and description of vehicles and personal property located at 387 North 300 East, Richfield, Utah. This affidavit was submitted in support of an application for a writ of entry made by the United States attorney's office for and in behalf of the Internal Revenue Service.

9. On July 25, 1984, United States Magistrate Calvin Gould signed a writ of entry in Misc. No. 84-125 permitting IRS entry onto the premises at 387 North 300 East, Richfield, Utah, in order to seize the personal property.

10. On July 26, 1984, Revenue

Officer Jernigan went to said premises and served Mr. Christensen with said writ, and with an Internal Revenue Service levy. She had personnel tow away the vehicles and remove the personal property. She then provided Mr. Christensen with an inventory of the property taken.

11. Thereafter, Revenue Officer Jernigan saw farm equipment on Mr. Christensen's farm in Richfield, Utah.

12. On July 31, 1984, the United States, for and in behalf of the Internal Revenue Service, filed an application for a second writ of entry, this time to enter the farm of Mr. Christensen in order to levy upon and seize the farm equipment and other personal property seen by Revenue Officer Jernigan. In support of the application, Revenue Officer Jernigan filed a second affidavit in which she described the location of the farm and the fact that she had personally seen farm and other person-

alty located theron. The affidavit also set forth the assessment, notice and demand, failure to pay, and filing of tax liens as with the first affidavit.

13. On July 31, 1984, Judge Gould signed a second writ of entry, in Misc. No. 84-126, permitting the Internal Revenue Service to enter the farm property and seize said personal assets.

14. On or about August 2, 1984, Revenue Officer Jernigan went to Richfield, Utah, and served Mr. Christensen with said writ, and with a levy. She had IRS personnel secure the farm equipment and other identified personal property on the Christensen farm, and then provided Mr. Christensen with an inventory of the property seized.

15. On August 14, 1984, Mr. Christensen filed a motion to vacate the writs of entry signed by the United States magistrate.

CONCLUSIONS OF LAW

1. This court has authority to hear and adjudicate applications for writs of entry pursuant to 26 U.S.C. § 7402.

2. Venue is proper under 28 U.S.C. § 1391.

3. The magistrate has authority to issue writs of entry and warrants upon a showing of probable cause pursuant to Fed. R. Crim. P. 41(a) and the following caselaw: G. M. Leasing Corp. v. United States, 429 U.S. 338 (1977); Carlson v. United States, 580 F.2d 1365 (10th Cir. 1978); Illinois v. Gates, 462 U.S. 213 (1983); and Aguilar v. Texas, 378 U.S. 108, 112 (1964).

4. The standard for extablishing probably cause in an Internal Revenue Service writ of entry is not the same as for a criminal warrant.

5. In an application for an Internal Revenue Service writ of entry, the Internal Revenue Service must establish by

affidavit that: 1) it has a right to levy and seize assets of the taxpayer; this means proper assessment, notice of assessment to the taxpayer, demand for payment, and non-payment, pursuant to 26 U.S.C. § 6213, § 6303 and § 6331; and 2) there is probable cause to believe there are assets which may be seized on the premises to be entered.

6. Affidavits submitted in support of applications for writs of entry are to be viewed in a common sense and realistic manner and are not to be given hypertechnical interpretations. Carlson at 1377.

7. The affidavits of Revenue Officer Jernigan expressly set forth the assessment, notice and demand by IRS, as well as the subsequent nonpayment by the taxpayer.

8. The first affidavit (filed on July 25, 1984) of Revenue Officer Jernigan sets forth a basis for probably cause to believe there were seizable assets on

the premises to be entered because she identified by address that the premises was the home of Mr. Christensen, and it is reasonable to believe that there would be assets of Mr. Christensen at that location. Furthermore, she described in her affidavit the property located there and her first-hand knowledge could be implied from the context of said description.

9. The second affidavit of Revenue Officer Jernigan (dated July 31, 1984) sets forth a basis for probably cause to believe there were seizable assets on the premises to be entered because Revenue Officer Jernigan says in her affidavit that she had personally seen the assets in question on the premises.

10. Mr. Christensen did not raise the issue of probably cause in his motion and therefore it is deemed to exist independently of the foregoing discussion of the affidavits. G. M. Leasing at 351.

11. Mr. Christensen is not entitled to notice and hearing prior to issuance of a writ of entry. Carlson at 1373-1374.

12. Mr. Christensen may not attack the validity of the Internal Revenue Service levy and seizure by his motion, only the validity of the writ of entry issued by the magistrate. The propriety of the levy and seizure which was made after the Internal Revenue Service gained access to Mr. Christensen's premises through writs of entry must be brought in a separate wrongful levy action pursuant to 26 U.S.C. § 7426(a)(1), or in a quiet title action pursuant to 28 U.S.C. § 2410.

13. The two writs of entry executed by the magistrate in Misc. No. 84-125 and Misc. No. 84-126 were lawfully entered and were based upon probably cause.

DATED this 16th day of October 14, 1984.

BY THE COURT:

/s/ David K. Winder
David K. Winder, Judge
United States District Court

Copies mailed to counsel 10-17-84cn:
C. William Ryan, AUSA
Edward D. Christensen, Pro Se

FILED
United States Court of Appeals
Tenth Circuit
MAR 04, 1985

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee, v. EDWARD D. CHRISTENSEN Defendant-Appellant.	)	No. 84-2503 (D.C. No. C-84-0731) (D. Utah)

ORDER AND JUDGMENT

Before HOLLOWAY, Chief Judge, LOGAN, Circuit Judge, and Moore, District Judge.*

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*The Honorable John P. Moore, United States District Judge for the district of Colorado, sitting by designation.

In accordance with 10th Cir. R. 9(e) and Fed. R. App. P. 34 (a), this appeal came on for consideration on the brief and

record on appeal.

This matter comes on appeal from an order of the district court denying defendant's motion to vocate two writs of entry executed by the magistrate pursuant to which agents of the Internal Revenue Service entered defendant's property and seized numerous items of personal property believed to belong to the defendant.

First, we construe the defendant's motion to supplement the record, filed February 20, 1985, as a motion to submit additional authority in support of his appeal. As construed, the motion is granted.

However, upon consideration of the defendant's arguments on appeal, we find that the district court's judgment should be affirmed. See 10th Cir. R. 17(b).

The judgment of the United States District Court for the District of Utah is AFFIRMED.

The mandate shall issue forthwith.

/s/ Howard K. Phillips
HOWARD K. PHILLIPS, Clerk

SEPTEMBER TERM - October 8, 1985

Before Honorable William J. Holloway, Jr., Chief Judge, Honorable James K. Logan, and Honorable John P. Moore, Circuit Judges, United States Court of Appeals

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	
v.	)	Nos. 84-2459 & 84-2503
EDWARD D. CHRISTENSEN, Defendant-Appellant.	)	

Before the court are defendant's petitions for rehearing filed in both of the above-captioned appeals and defendant's motion to file additional authority in support of his petition for rehearing in No. 84-2503.

Upon consideration of the matter, we find that the petitions for rehearing are successive to those decided in our order of June 10, 1985. The rules of prodecure do not allow successive petitions for rehearing.

Therefore, the petitions for rehearing are denied as is the motion in No. 84-2503 to submit additional authority in support of rehearing.

/s/ Howard K. Phillips
HOWARD K. PHILLIPS, Clerk